IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.4.2006

CORAM

THE HON'BLE MR.JUSTICE K.MOHAN RAM

Writ Petition No.9284 OF 2006

Pushpanjali Silk Private Limited
rep. by its Director
Sanjiv Kumar Jhunihunwala
F-7, Swastik Manandi Arcade
401/2, Subedar Chatram Road
Seshadripuram
Bangalore - 560 020 .. Petitioner

vs.

1. The Chief Commissioner of Customs
   Custom House
   No.60, Rajaji Salai
   Chennai - 600 001

2. The Commissioner of Customs (Port-Imports)
   Custom House
   No.60, Rajaji Salai
   Chennai - 600 001

3. The Assistant Commissioner of Customs
   Group 3 & 4
   Custom House
   No.60, Rajajai Salai
   Chennai - 600 001 .. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the third respondent to release Mulberry Raw Silk imported under Bill of Entry No.875113 dated 15.9.2005 as per Sales Contract No.IE/PSR-RS03/2005, dated 17.2.2005 in terms of the Final Order No.174/2006 dated 20.3.2006 of the Customs, Excise and Service Tax Appellate Tribunal.

For petitioner : Mr.Habibullah Badsha for
M/s..L.Maithili

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For respondents : Mr.V.T.Gopalan for
Additional Solicitor
General for
Mr.T.S.Sivagnanam
A.C.G.S.C.

O R D E R

Considering the narrow scope, within which the matter lies, by consent of the learned counsel for both the parties, the writ petition itself is taken up for final disposal .

2. This writ petition has been filed for the issuance of a writ of mandamus directing the third respondent to release Mulberry Raw Silk imported under Bill of Entry No.875113 dated 15.9.2005 as per Sales Contract No.IE/PSR-RS03/2005, dated 17.2.2005 in terms of the Final Order No.174/2006 dated 20.3.2006 of the Customs, Excise and Service Tax Appellate Tribunal.

3. It is the case of the petitioner that the petitioner challenged the order of the third respondent by filing an appeal before the Commissioner of Customs (Appeals), Chennai, on 30.1.2006, along with a request for earlier hearing/disposal of the appeal. The Appellate Commissioner taking into account the urgency in the matter and the various representations made in this regard by the petitioner, heard the appeal on 6.2.2006.

4. On 16.2.2006, the Appellate Commissioner passed order in Appeal No.C.CUS.97/06 bearing Ref.No.C3/49/0/2006-SEA dated 16.2.2006 setting aside the order of the third respondent and allowed the appeal filed by the petitioner, holding that the goods imported under contract dated 17.2.2005 were required to be assessed on the basis of the value of USD 13.94/Kg.CIF, as had been accepted in the past by the petitioner.

5. Even thereafter, since the third respondent did not implement the order of the Commissioner (Appeals) and goods were released, the petitioner filed W.P.No.5697 of 2006 for a writ of certiorarified mandamus seeking to quash the communication dated 24.2.2006 of the third respondent and release of goods in terms of the orders of the Commissioner (Appeals) dated 16.2.2006. This Court disposed of the writ petition itself on 2.3.2006 and set aside the Assistant Commissioner's direction and directed him to release the goods in terms of Order in Appeal No.97 of 2006 dated 16.2.2006 unless the department either decided not to file appeal against the said Order in Appeal or failed to get any order of stay from the CESTAT by 10.3.2006. Pursuant to which, the second respondent filed an appeal along with an application for stay of operation of the order of the Commissioner (Appeals) dated

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16.2.2006 before the Customs, Excise and Service Tax Appellate Tribunal, Chennai, (hereinafter referred as the CESTAT) and the same was numbered as C/50/06. On 20.3.2006, the CESTAT pronounced Final Order No.174/2006 dated 20.3.2006 rejecting the Revenue appeal and upheld the order of the Commissioner (Appeals) dated 16.2.2006.

6. It is the further case of the petitioner that the petitioner's counsel immediately addressed a letter to the respondents informing them of the CESTAT order and requesting immediate release of the consignment in terms of the said order. On 23.3.2006, the petitioner received a certified copy of the CESTAT order dated 20.3.2006. Immediately, the petitioner sent copies of the CESTAT order to the respondents and sought due implementation of the same and immediate release of the goods.

7. The petitioner and its counsel followed this with several oral and written representations to the respondents. The petitioner specifically brought to the notice of the respondents the orders dated 2.3.2006 of this Court in W.P.No.5697 of 2006 and W.P.M.P.No.6182 of 2006, wherein the respondents were directed to implement the orders of the Appellate Authority in the absence of a stay order. Despite this, the respondents have neither replied to the representations nor released the goods covered under Bill of Entry No.875113 dated 15.9.2005, showing a cavalier attitude and scant regard for the principles of judicial discipline.

8. The counsel for the petitioner personally pursued the matter before each of the respondents and also with the Joint Commissioner of Customs, working under the second respondent. However, the officers of the respondents have been giving evasive replies, with each of them asking the counsel to contact another Officer. Under these circumstances, the counsel for the petitioner sent a telegraphic notice to the respondents on 28.3.2006, seeking immediate release of the goods in terms of the CESTAT order. However, even this was of no avail.

9. In the above said circumstances, the above writ petition has been filed.

10. Heard both sides.

11. Mr.Habibullah Badsha, learned senior counsel appearing for the petitioner by relying upon the decision of the Hon'ble Supreme Court of India in the case of Union of India Vs. Kamalakshi Finance Corporation 1991 (55) E.L.T.433 (S.C.) submits that the action of the third respondent amounts to harassment of the petitioner and failure of third respondent to give effect to the orders of the Appellate Authority is not justifiable.

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12. Learned senior counsel further submits that the order of the Commissioner (Appeals) and the order of the CESTAT, is binding on the third respondent and therefore the third respondent is bound to follow and give effect to the orders passed by the Appellate Authorities. Learned senior counsel further submits that the petitioner is incurring heavy demurrage charges because of the non clearing goods.

13. Mr.V.T.Gopalan, learned Additional Solicitor General, has not disputed the above said legal submission made by the learned senior counsel Mr.Habibullah Badsha but he submits that the Revenue is filing an appeal before the Supreme Court of India and the Revenue is also approaching CESTAT for interim suspension of the order. Therefore, the learned Additional Solicitor General submits that some time may be given to the Revenue to implement the orders of the Appellate Authorities.

14. Considering the above submissions made by the learned counsel for the petitioner as well as the Additional Solicitor General, I am of the view that the third respondent is duty bound to implement the orders passed by the Appellate Authority and he cannot flout the orders by not releasing the goods covered by the Bill of Entry in question. As laid down by the Hon'ble Supreme Court in 1991 (55) E.L.T. 433 judicial discipline would require that the authorities are bound by the decision of the Tribunal or the Appellate Authority. Admittedly, though the CESTAT pronounced Final Order No.174/2006 dated 20.3.2006, the Revenue has not so far obtained any order from the CESTAT suspending the operation of the said order. It is not the case of the Revenue that the order of the CESTAT has been stayed by the Hon'ble Supreme Court of India. Therefore, I am of the view that the principle laid down by the Apex Court of the land in 1991 (55) E.L.T. 433 has to be applied and the third respondent should follow unreservedly the orders of the CESTAT, Chennai. Therefore, the third respondent is directed to release the Mulberry Raw Silk imported under Bill of Entry No.875113 dated 15.9.2005 as per Sales Contract No.IE/PSR-RS03/2005, dated 17.2.2005 in terms of the Final Order No.174/2006 dated 20.3.2006 of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

15. Accordingly, the Writ petition is allowed. The third respondent shall release the above said goods covered by the said Bill of Entry on or before 7.4.2006. However, if in the meantime, the Revenue obtains any order from the the CESTAT, Chennai, suspending the operation of its order dated 20.3.2006 or any

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interim orders are obtained from the Hon'ble Supreme Court of India the third respondent shall take note of the same and act accordingly. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Chief Commissioner of Customs
   Custom House
   No.60, Rajaji Salai
   Chennai - 600 001

2. The Commissioner of Customs (Port-Imports)
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3. The Assistant Commissioner of Customs
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   Custom House
   No.60, Rajajai Salai
   Chennai - 600 001

1 cc to Mr.T.S.Sivagnanam, ACGSC, SR. 16908
1 cc to M/s. L. Maithili, Advocate, Sr. 16891

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